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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,333	07/26/2001	Franco Pamparana	101615-00012	5701

7590

11/22/2002

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EXAMINER

HENLEY III, RAYMOND J

ART UNIT PAPER NUMBER

1614

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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HENLEY III, RAYMOND J

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DATE MAILED: 03/14/2002

Restart 11-22-02

Please find below and/or attached an Office communication concerning this application or proceeding.

*Restart time due to change of
address wasn't processed
timely in the file.
B. Gray
11/02/02*

Office Action Summary

Application No.
09/869,333

Applicant(s)
Franco Pamparana

Examiner
Ray Henley

Art Unit
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4-5
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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CLAIMS 1-9 ARE PRESENTED FOR EXAMINATION

Applicant's Information Disclosure Statements filed November 15, 2001 and December 5, 2001 have been received and entered into the application. As reflected by the attached, completed copies of form PTO-1449, the cited references have been considered. The reference cited by the Examiner on the attached form PTO-892 was included with applicant's priority documents and thus, a copy of such reference has not been provided.

Applicant's Preliminary Amendment filed July 26, 2001 has been received, but could not be entered. Such amendment directed the Office to amend claims 1, 3-5, 9-11, 15, 21, 26 and 29. However, only claims 1-9 are present in the application.

Claim Rejection - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See, for example, *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966) respecting the impropriety of claims reciting "Use of..." and their dependents.

Accordingly, these claims can not be further treated on the merits.

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None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1000

Henley; rjh
March 13, 2002